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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2008-0071]

Privacy Act of 1974: Implementation of Exemptions; Immigration and Customs Enforcement (ICE) Pattern Analysis and Information Collection (ICEPIC) System

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a new system of records entitled the "Immigration and Customs Enforcement (ICE) Pattern Analysis and Information Collection (ICEPIC) System" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the ICEPIC system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 18, 2008.

FOR FURTHER INFORMATION CONTACT: Lyn Rahilly, Privacy Officer, U.S. Immigration and Customs Enforcement, 425 I Street, NW., Washington, DC 20536, *e-mail:* ICEPrivacy@dhs.gov, or Hugo Teufel III (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 5460 (Jan. 30, 2008), proposing to exempt portions of the

system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the ICE Pattern Analysis and Information Collection (ICEPIC). The ICEPIC system of records notice (SORN) was published concurrently in the **Federal Register**, 73 FR 5577 (Jan. 30, 2008), and comments were invited on both the proposed rule and SORN. Six comments were received. All commenters were generally in favor of implementation of the rule as proposed. Accordingly, the Department is adopting the proposed rule as final. Concurrently in this issue of the **Federal Register**, ICE is re-publishing the SORN for ICEPIC to address comments received through the **Federal Register** comment procedure. Given no changes were made to the rule or the SORN, Privacy Impact Assessment for ICEPIC dated January 30, 2008, remains accurate and is posted on the Department's privacy Web site. (See <http://www.dhs.gov/privacy> and follow the link to "Privacy Impact Assessments").

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, DHS certifies that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities. Further, in accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, DHS has determined that this final rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

Public Comments

ICE received and considered the public comments, which are discussed further below, and concluded that no substantive changes to the rule are warranted at this time. While all comments were in favor of the proposed rule, two commenters also raised specific concerns related to this system of records, which are addressed below.

One commenter expressed concern that individuals would be unable to ensure their personal information in ICEPIC is accurate unless they are permitted access to their records. Other means exist to verify the accuracy of ICEPIC data and ensure that incorrect data is not used to prejudice that individual. ICEPIC users are trained to

verify information obtained from ICEPIC before including it in analytical reports that will be used during investigations or shared with government personnel outside of ICE. Verification procedures include direct queries to the source databases from which ICEPIC originally obtained the information, queries of commercial or other government databases, and ICE agent interviews with individuals or others who are in a position to confirm the ICEPIC data. These procedures mitigate the risk posed by inaccurate data in the system and raise the probability that such data will be identified and corrected before any action is taken that would prejudice an individual. In addition, the source systems from which ICEPIC obtains information may, themselves, have mechanisms in place to ensure the accuracy of the data prior to the information being accessed through ICEPIC.

Another commenter, while in favor of the system, expressed these concerns as follows:

"By limiting access to a small number of people, power and responsibility may be monopolized in the hands of some who are never given a system of checks and balances over their power. The only other concern that I have is that, as domestic and international security policies and concerns shift over time, this proposed rule change will be stagnant. I would propose then that this rule be revisited in the coming years as security threats continue to fluctuate."

To ensure the system contains appropriate checks and balances to oversee those who have access to ICEPIC information, ICE has established appropriate controls and safeguards that provide oversight of authorized ICEPIC users. All user activity is audited and subject to periodic review to identify unauthorized use or activity. ICE investigates instances of unauthorized or inappropriate access or use of the system and takes appropriate disciplinary actions where violations have occurred. The commenter also recommended a review of this system in the future because "security threats continue to fluctuate." ICE and DHS continue to exercise diligence in the response to the evolving threat environment. Should there be a need to substantially alter this system in the future, similar public notice and an

opportunity to comment will be provided.

Regulatory Requirements

A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review" (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking, and concluded that there will not be any significant economic impact.

2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The exemptions relate to criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104-4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has

determined that there are no current or new information collection requirements associated with this rule.

C. Executive Order 13132, Federalism

This action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 5 continues to read as follows:

Authority: Pub. L. 107-296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552.

■ 2. At the end of appendix C to part 5, add the following new paragraph 6 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

6. The Immigration and Customs Enforcement (ICE) Pattern Analysis and Information Collection (ICEPIC) System consists of electronic and paper records and will be used by DHS and its components. ICEPIC is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws (including the immigration law); investigations, inquiries, and proceedings there under; and national security and intelligence activities. ICEPIC contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal,

foreign, or international government agencies.

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: Refusal to amend a record; Refusal to comply with a request for access to records; failure to maintain accurate, relevant timely and complete records; or failure to otherwise

comply with an individual's right to access or amend records.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1 and 33

[Docket No.: FAA-2007-27899; Amendment No. 33-25]

RIN 2120-AI96

Airworthiness Standards: Rotorcraft Turbine Engines One-Engine-Inoperative (OEI) Ratings, Type Certification Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration (FAA) is amending the One-Engine-Inoperative (OEI) rating definitions and type certification standards for 30-second OEI, 2-minute OEI, and 30-minute OEI ratings for rotorcraft turbine engines. This action revises the ratings' standards to reflect recent analyses of the ratings' use and lessons learned from completed engine certifications and service experience. This rule harmonizes FAA type certification standards for these ratings with the requirements of the European Aviation Safety Agency in the Certification Specifications for Engines and with proposed requirements for Transport Canada Civil Aviation, thus simplifying airworthiness approvals for import and export.

DATES: This amendment becomes effective October 17, 2008.

FOR FURTHER INFORMATION CONTACT: Dorina Mihail, Engine and Propeller Standards Staff, ANE-110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5229; (781) 238-7153; facsimile: (781) 238-7199; e-mail: dorina.mihail@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator.

Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce, including minimum safety standards for aircraft engines. This rule is within the scope of that authority because it updates the existing regulations for type certification standards for OEI ratings for rotorcraft turbine engines.

Background

On May 4, 2007, the FAA published a notice of proposed rulemaking (NPRM) titled "Airworthiness Standards: Rotorcraft Turbine Engines One-Engine-Inoperative (OEI) Ratings, Type Certification Standards" (72 FR 25207). The comment period for the NPRM closed on August 2, 2007.

The OEI power ratings provide rotorcraft with higher than takeoff and maximum continuous power ratings needed when one engine of a multi-engine rotorcraft fails or is shut down during flight, such as during takeoff, cruise, or landing. These OEI power rating powers enable the rotorcraft to continue safe flight until it reaches a suitable landing site. Part 33 prescribes airworthiness standards for 30-second OEI, 2-minute OEI, 2½-minute OEI, 30-minute OEI, and continuous OEI ratings for the issuance of type certificates for rotorcraft turbine engines. All OEI ratings are optional ratings that engine manufacturers may select from those specified in § 33.7.

This final rule harmonizes with the corresponding airworthiness standards for OEI ratings of the European Aviation Safety Agency (EASA) without reducing the existing level of safety.

Summary of Comments

Three commenters, including a turbine engine manufacturer, General Electric (GE); a foreign aviation authority, Transport Canada Civil Aviation (TCCA); and an industry association, Aerospace Industries Association (AIA); responded to the NPRM request for comments. The GE and AIA comments are identical. TCCA had a number of comments. All of the commenters generally supported the proposed changes. All comments included suggested changes, as discussed in the discussion of the final rule below.